

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

DELOITTE & TOUCH LLP

1. Introduction

A. Parties

This Contract for Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Deloitte & Touche LLP (“Vendor”), with its principal place of business at 30 Rockefeller Plaza, New York, NY 10112.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-247, on May 23, 2016, for Information Technology Security (ITS) Hardware, Software and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-247 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-247, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-247, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally,

the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Service Offerings

Services available under this Contract are limited to Information Technology Security (ITS) services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Mike Wyatt
Deloitte & Touche LLP
400 West 15th Street
Austin, Texas 78701
Phone: (512) 771-8062
Facsimile: (512) 936-6896
Email: miwyatt@deloitte.com

7. Conflicting or Additional Terms

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer of Publisher.

8. Authorized Exceptions to Contract and any Appendices.**A. Appendix A, Section 4. Intellectual Property Matters, B. Ownership,** is hereby replaced as follows:

As between Vendor and Customer, upon full payment of correct invoices for each such Work Product, the Work Product and Intellectual Property Rights therein (other than Vendor IP as defined below) are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation and full payment of all correct invoices directly related to the element of Work Product, be owned exclusively by Customer (other than Vendor IP). To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product (other than Vendor IP), without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product (other than Vendor IP).

Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third-Party IP, except as may be incorporated in the Work Product by Vendor.

Notwithstanding any provisions to the contrary in Section 4(A) (5) of Appendix A to the DBITS Contract, the parties hereby agree that Vendor has created, acquired, or otherwise has rights in, and may, in connection with the performance of the Services, employ, provide, modify, create, acquire, or otherwise obtain rights in, pre-existing or independently developed works of authorship, materials, information, and other intellectual property (collectively, the "Vendor IP"). Notwithstanding any provisions to the contrary hereunder, to the extent that any Vendor IP is contained in any of the Work Product, Vendor hereby grants Customer, upon full and final payment to Vendor hereunder, a royalty-free, fully paid-up, worldwide, nonexclusive license to use such Vendor IP solely in connection with the Work Product. In the event Customer disputes an invoiced amount for a Work Product, during the period between delivery of such Work Product by Vendor and the

resolution of the dispute, Vendor hereby grants Customer a royalty-free, fully paid-up, worldwide, nonexclusive license to use such Work Product, and any Vendor IP contained therein solely in connection with the Work Product.

B. Appendix A, Section 4. Intellectual Property Matters, E. Confidentiality, is hereby replaced as follows:

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub- paragraph H. hereunder. Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer provided that Vendor shall use, disclose or obtain any Vendor IP that may be contained in such Work Product. Notwithstanding the foregoing, Vendor may disclose Customer information to subcontractors that are providing services in connection with this Contract and that have agreed to be bound by the confidentiality obligations of this Section, and otherwise as required by law.

C. Appendix A, Section 4. Intellectual Property Matters, G. Return Materials Pertaining to Work Product, is hereby replaced as follows:

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor in each case for delivery as Work Product to Customer or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete except for any Vendor IP contained therein (to which Customer shall have a perpetual, non-exclusive license as provided under Section 4.B hereunder). This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertain to the Work Product.

D. Appendix A, Section 6. Services Warranty and Return Policies, G. Return Materials Pertaining to Work Product, is hereby replaced as follows:

Vendor warrants that the Services shall be performed by competent personnel in a workmanlike manner, and shall be of professional quality consistent with generally accepted industry standards for the performance of the Services. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR

IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

E. Appendix A, Section 8. Contract Administration, C. Records and Audit, 3), is hereby replaced as follows:

Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, Customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

F. Appendix A, Section 9. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions, is hereby replaced as follows:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS OR OTHER ECONOMIC LOSS AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES FOR THIRD PARTY CLAIMS FOR (I) PERSONAL INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract, or (ii) violation by Vendor in performing the services hereunder of applicable State or Federal privacy law including but not limited to disclosures of confidential information in violation of applicable State or Federal privacy law, and any penalty of any kind lawfully assessed against any such indemnified party as a result of

such violation; or (iii) loss or damage to IT systems or data to the extent directly caused by negligence or wrongful acts or omissions of Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract, provided that Customer shall cooperate with Vendor in Vendor's efforts to mitigate any such loss or damage to IT systems or data, including by allowing Vendor to restore or repair such data via the most recent back-up thereof. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

G. Appendix A, Section 9. Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the work product or service for a purpose or in a manner for which the work product or service was not designed, (ii) any modification made to the work product without Vendor's written approval, (iii) any modifications made to the work product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the work product or service by Customer that is not in conformity with the terms of any applicable license agreement, (vi) the Customer's failure to use any corrections or modifications made available by Vendor.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the

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case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

H. Appendix A, Section 9. Vendor Responsibilities, N. Required Insurance, is hereby replaced as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best, and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage with the exception of Worker's Compensation. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. Vendor will provide thirty (30) days' prior written notice to DIR and the Customer in the event of cancellation or adverse material changes to any of the required insurance coverages specified herein. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include minimum limit \$1,000,000 per occurrence for Bodily Injury and Property Damage with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract pursuant to all policy terms and conditions;
- b) State of Texas, DIR and Customer listed as an additional insured;
and
- c) Waiver of Subrogation.

2) Workers' Compensation Insurance

WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY COVERAGE MUST INCLUDE LIMITS CONSISTENT WITH STATUTORY BENEFITS OUTLINED IN THE TEXAS WORKERS' COMPENSATION ACT (ART. 8308-1.01 ET SEQ. TEX. REV. CIV. STAT) AND MINIMUM POLICY LIMITS FOR EMPLOYERS' LIABILITY OF \$1,000,000 PER ACCIDENT, \$1,000,000 DISEASE PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

I. Appendix A, Section 10. Contract Enforcement, B. Termination, 3)

Termination for Convenience, is hereby replaced as follows:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days' written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days' written notice.

J. Appendix A, Section 10. Contract Enforcement, B. Termination, 4)

Termination for Cause, b) Purchase Order, is hereby replaced as follows:

Customer or Vendor may terminate a Purchase upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Under Sections 10.B.4(a) and (b), the right to terminate the Contract is not contingent on first following dispute resolution. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance arose in the course of Vendor's provision of goods or services to the Customer.

K. Appendix A, Section 10. Contract Enforcement, B. Termination, 5) Immediate Termination or Suspension, is hereby replaced as follows:

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal activity by Vendor (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor may be held ineligible to receive further business or payment but Customer may permit Vendor to wind down or transition the services as reasonably practicable during any notice period provided by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

L. Appendix A, Section 10. Contract Enforcement, C. Force Majeure, is hereby replaced as follows:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, or other causes beyond its control, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order without finding of fault if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer due to a Force Majeure event.

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This Contract is executed to be effective as of the date of last signature.

DELOITTE & TOUCHE LLP

Authorized By: Signature on File

Name: Michael Wyatt

Title: Principal

Date: 6/5/2018

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 6/6/2018

Office of General Counsel: DB 6/6/2018